***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 35 of 1991
Date of decision: 17.8.2007

The Commissioner of Income-Tax, Patiala

...Petitioner

Versus

M/S Rieta Biscuits Co. Pvt. Ltd., Patiala

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate for the Petitioner

Mr. Akshay Bhan, Advocate for the respondent.

****

RAJESH BINDAL,J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal), arising out of order passed in I.T.A.No. 503 of 1987 in respect of the assessment year 1983-84 :-

> Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that once the income from leased plant and machinery is taken as income from business, investment allowance on such plant and machinery is admissible in law?

Briefly the facts, are that assessee had leased out its plant and machinery to other company and claimed deduction under Section 32A of the Income Tax Act, 1961 (for short "the Act") on the investment on plant and machinery made by it which was allowed.

Finding that order passed by assessing authority was erroneous and prejudicial to the interest of the revenue, proceedings under Section 263

of the Act were initiated. The matter was remitted back to the Assessing Officer for fresh examination. The Tribunal in further appeal, however, held that once the income from lease is assessed under the head of income from 'business and profession', the necessary corollary would that investment allowance under Section 32A of the Act was admissible. The Tribunal while accepting the plea of the assessee relied upon a judgment of Andhra Pradesh High Court in **C.I.T. Vs. Vinod Bhargava** (1988) 169 ITR 549.

We have heard learned counsel for the parties and with their assistance have perused the paper book. The question referred to this Court proceeds on the assumption that income from lease of plant and machinery is assessed under the head 'income from business and profession'. The question thus is whether investment allowance on such plant and machinery is admissible in law. At the very outset, learned counsel appearing for the assessee has submitted that issue referred in the instant case is squarely covered by the judgment of Hon'ble the Supreme Court in **Commissioner of Income-Tax Vs. Shan Finance (P) Ltd.** (1998) 231 ITR 308 wherein Hon'ble the Supreme Court while upholding the judgment of Andhra Pradesh High Court in Vinod Bhargava's case (supra) has held that where the income from leasing of plant and machinery is assessed as business income, it would be contradictory in terms to say that machinery is not used wholly for the purpose of assessee's business. Hon'ble the Supreme Court also referred its earlier judgment in **Commissioner of Income-Tax Vs. Castle Rock Fisheries** (1998) 231 ITR 304 wherein it was held that where the business of the assessee consists of hiring out machinery and/or where the income derived by the assessee from the hiring of such machinery is business income, then the assessee must be considered as having used the machinery for the purposes of its business.

Learned counsel appearing for the respondents could not dispute this proposition of law laid down by Hon'ble the Supreme Court. Accordingly, following the dictum of law laid down by Hon'ble the Supreme Court in Shaan Finance (P.) Ltd.'s case (supra), the question deserves to be answered against the revenue.

For the reasons recorded above, the question referred is

***

answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

August 17, 2007 **(M.M.Kumar)**
Pka **Judge**

***

A plain reading of the question referred to this Court for opinion clearly shows that it is on premise that if income from lease of plant and machinery is assessed under the head income from business and profession,